



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 3  
1650 ARCH STREET  
PHILADELPHIA, PA 19103

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Adam Ortiz  
Regional Administrator

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I understand that I have an imputed financial interest based on my position as a board member of the **Pyramid Atlantic Arts Center** and as a member of the **Blue Plains Musical Group**. While I have received approval from OGC/Ethics to continue in both of these outside activities, I understand that I cannot participate personally and substantially in any particular matter that will have a direct and predictable effect on the **Pyramid Atlantic Arts Center** or the **Blue Plains Musical Group** as a specific party or as a member of an affected class, unless I first obtain a written waiver.

## *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

I understand that, pursuant to Section 1, Paragraph 2 of the Executive Order, the entities set forth in the table below are considered to be my former employers because I served them in a fiduciary role. I further understand that I am prohibited from participating in any particular matter involving specific parties in which the below entities are a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after November 1, 2023.

Former Employers
Green America Community Forklift

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding a former employer do not apply to the **Montgomery County Department of Environmental Protection** nor to the **District of Columbia Water and Sewer Authority (DC Water)**, for whom I served as a principal board member on behalf of Montgomery County. The definition of “former employer” excludes an entity of a state or local government.<sup>2</sup> Therefore, OGC/Ethics has confirmed that I am not subject to these additional Executive Order restrictions with respect to the **Montgomery County Department of Environmental Protection** or **DC Water**. I am instead subject to the loss of impartiality provisions, discussed below.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

As a federal employee, I am obliged to adhere to the federal conflicts of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. The ethics regulations include specific provisions governing impartiality. *See* 5 C.F.R. Part 2635, Subpart E. I understand that I must take appropriate steps to avoid an appearance of a

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<sup>1</sup> *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

<sup>2</sup> *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

loss of impartiality in the performance of my official duties. Unless I receive prior written authorization, I will not participate in any particular matter involving a specific party that I know will affect the financial interests of member of my household or a person with whom I have a “covered relationship” as defined at 5 CFR § 2635.502(b).

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with my former employer, which is a local government agency. Therefore, I may not participate in a particular matter involving specific parties in which the **Montgomery County Department of Environmental Protection** is a party or represents a party, unless I am first authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts until after October 29, 2022, which is one year after I resigned from the department.

The Alternate Designated Agency Ethics Official issued an impartiality determination to me with respect to DC Water on February 4, 2022. Under that determination, I am authorized to work on specific party matters where DC Water is a party or represents a party, so long as I did not work personally and substantially on those very same specific party matters. *See attached.*

To avoid even an appearance of a loss of impartiality, I am recusing myself from participating personally and substantially in any personnel or administrative matter, including but not limited to awards, promotions, or reassignment, involving Region 3 employee, Brandon Miller, who is a member of the Blue Plains Musical Group, as a specific party. Any such matters should be directed to my screener for appropriate action without my participation or knowledge.

#### *DIRECTIVE AND CONCLUSION*

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of the Deputy Regional Administrator, Diana Esher, without my knowledge or involvement. In the event that my circumstances change, including my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and/or regional ethics counsel and update my recusal statement accordingly.

Attachment

cc: Diana Esher, Deputy Regional Administrator  
Allison Gardner, Acting Regional Counsel  
Phil Yeany, Team Lead for Ethics  
Justina Fugh, Director, Ethics Office